

**Letter of Findings Number: 02-20120666P  
Corporate Income Tax-Penalty  
For the Year Ending December 31, 2008**

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**ISSUE**

**I. Tax Administration—Estimated Tax Penalty.**

**Authority:** IC § 6-3-4-4.1.

Taxpayer protests the imposition of the ten percent penalty for failure to make sufficient estimated tax payments during the tax year.

**STATEMENT OF FACTS**

Taxpayer is a C corporation operating in Indiana. For tax year 2008, Taxpayer initially reported an Indiana tax liability of roughly \$74,000. The Indiana Department of Revenue ("Department") audited Taxpayer and determined that Taxpayer properly had an Indiana tax liability of approximately \$725,000. The Department did not assess a negligence penalty on the assessment. However, the assessment resulted in a penalty for failure to remit sufficient estimated taxes for three quarters in 2008. Taxpayer protested the imposition of the penalty, the Department conducted an administrative hearing, and this Letter of Findings results.

**I. Tax Administration—Estimated Tax Penalty.**

**DISCUSSION**

Taxpayer protests the imposition of the ten percent penalty imposed because of Taxpayer's failure to make sufficient estimated tax payments as required pursuant to IC § 6-3-4-4.1(d). The burden of proving a proposed assessment incorrect—including a penalty assessment—rests with the taxpayer, as provided under IC § 6-8.1-5-1(c).

IC § 6-3-4-4.1 provides in relevant part:

(c) Every corporation subject to the adjusted gross income tax liability imposed by this article shall be required to report and pay an estimated tax equal to the lesser of:

(1) twenty-five percent (25 [percent]) of such corporation's estimated adjusted gross income tax liability for the taxable year; or

(2) the annualized income installment calculated in the manner provided by Section 6655(e) of the Internal Revenue Code as applied to the corporation's liability for adjusted gross income tax.

A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's estimated adjusted gross income tax returns and pay the tax to the department on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer uses a taxable year that does not end on December 31, the due dates for filing estimated adjusted gross income tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year. The department shall prescribe the manner and forms for such reporting and payment.

(d) The penalty prescribed by [IC 6-8.1-10-2.1](#)(b) shall be assessed by the department on corporations failing to make payments as required in subsection (c) or (f). However, no penalty shall be assessed as to any estimated payments of adjusted gross income tax which equal or exceed:

(1) the annualized income installment calculated under subsection (c); or

(2) twenty-five percent (25 [percent]) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall only be assessed on the difference between the actual amount paid by the corporation on such estimated return and twenty-five percent (25 [percent]) of the corporation's final adjusted gross income tax liability for such taxable year.

The Department is unwilling to agree that an audit assessment can never result an estimated tax penalty under IC § 6-3-4-4.1. However, in this case, Taxpayer's proposed assessment for Indiana income tax—which Taxpayer did not protest—was due to a reasonable, albeit legally erroneous, filing position. Based on the reasonableness of its actions and its payment of estimated taxes based on its original, reasonable filing position, Taxpayer has provided sufficient legal and factual grounds to justify penalty waiver for 2008.

**FINDING**

Taxpayer's protest is sustained.

*Posted: 06/26/2013 by Legislative Services Agency*  
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